



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

September 6, 2013

VIA E-MAIL (ForrestNYSDChambers@nysd.uscourts.gov)

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street, Room 730
New York, NY 10007

**Re: In Re: 650 Fifth Avenue and Related Properties,
 08 Civ. 10934 (KBF)**

Dear Judge Forrest:

The Government respectfully submits this letter pursuant to the Court's questions at the September 4, 2013 conference regarding the second document that was inadvertently produced by the Government that contains privileged information.

On or about Saturday, August 17, 2013, the Government became aware, for the first time, that it had inadvertently produced a document, bearing Federal Bureau of Investigation ("FBI") bates number FBI137675-76 (the "Privileged Document") which contained privileged information. The Government became aware of the Privileged Document after having reviewed the Alavi Foundation and 650 Fifth Avenue Company's (collectively "Alavi") summary judgment motion over the weekend of August 17, 2013, and noticing that Alavi had attached the Privileged Document to their motion. *See* Alavi Summ. Judgment Mot. at 7 and 22; Ruzumna Decl. Exs. 29-31. Alavi's motion was filed on Friday, August 16, 2013 (at midnight), the same day that the Government's motion for summary judgment was due. On Tuesday, August 20, 2013, the Government contacted counsel for Alavi and requested the "claw back" of the Privileged Document pursuant to Section IX of the Protective Order governing this case (Dkt. No. 236) and in accordance with Rule 26(b)(5)(B) of the Federal Rules of Civil Procedure.

Counsel refused to return the document to the Government and in fact attached that very same document that the Government had asserted privilege over to their Motions in Limine filed the very next day. Although the issue was addressed in the parties' motions *in limine*, Alavi submitted a letter on the issue on August 28, 2013, to which the Government responded on September 3, 2013. The Government's September 3, 2013 letter has been posted to the docket as ECF Dkt. No. 807.

Accordingly, for the reasons set forth in our September 3, 2013 letter and the reasons set forth above, the Government respectfully submits that (1) it has not waived privilege; (2) it requested the return of the Privileged Document immediately upon discovery of the inadvertent disclosure; and (3) the time between when the Privileged Document was produced and when it was discovered that it contained privileged information is minimal. Therefore, the Government respectfully requests that Alavi be ordered to comply with the Protective Order and the Federal Rules of Civil Procedure and return the Privileged Document to the Government and that reference to said document in Alavi's papers or on the docket be redacted consistent with the terms of the Protective Order.

Respectfully submitted,

PREET BHARARA
United States Attorney for the
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Via E-mail

cc: Counsel for Alavi and 650 Fifth Avenue (redacted and unredacted versions)
Other Counsel of Record (redacted)